

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BEFORE THE COURT is Plaintiff's Motion to Remand (Ct. Rec. 10). An expedited hearing was held on January 17, 2006 on this matter at which time the Court heard oral argument from David Klein, on behalf of Teck Cominco ["TCML"], Cathy Spicer, on behalf of Icarom, and Bradley Smith, on behalf of Seaton Insurance Company. After having fully considered the matter and having heard oral argument, the Court issued its ruling orally. This Order is intended to memorialize and supplement the oral ruling of the Court.

For the reasons stated on the record and herein, the Court finds as follows:

1. The Foreign Sovereign Immunities Act gives federal courts jurisdiction over actions against foreign parties. The Foreign Sovereign Immunity Act ("FSIA"), 28 U.S.C. §§ 1602-1611, defines a foreign state to include a political subdivision of a foreign state

1 or an agency or instrumentality of a foreign state. 28 U.S.C. §
 2 1603(a). Icarom qualifies as an "agency or instrumentality of a
 3 foreign state" as defined by the FSIA. The Third Circuit in *USX*
 4 *Corp. v. Adriatic Insurance Co. et al.*, 345 F.3d 190 (3rd Cir. 2003),
 5 after an exhaustive review of the facts concluded that Icarom meets
 6 the "organ of a foreign state" prong of this definition. While
 7 arguing for the opposite result in this litigation, counsel for
 8 plaintiff was not able to show any factual changes in the way Icarom
 9 now does business to suggest that a different ruling should issue
 10 from this court. Having reviewed the submittals of all parties, the
 11 undersigned judicial officer agrees with the fundamental holding in
 12 *USX, supra*, which is largely based on 9th Circuit criteria expressly
 13 adopted by the 3rd Circuit. Accordingly, this matter was properly
 14 removed by Defendant Icarom pursuant to 28 U.S.C. § 1441(d).

15 2. This Court has subject matter jurisdiction over this entire
 16 action though there are non-foreign defendants involved. See
 17 *Chuidian v. Philippine Nat'l Bank*, 912 F.2d 1095 (9th Cir.1990);
 18 *Teledyne, Inc. v. Kone Corp.*, 892 F.2d 1404, 1407-10 (9th Cir.1989);
 19 *In re Surinam Airways Holding Co.*, 974 F.2d 1255, 1258-60 (11th
 20 Cir.1992); *Nolan v. Boeing Co.*, 919 F.2d 1058, 1064-66 (5th
 21 Cir.1990); *Davis v. McCourt*, 226 F.3d 506, 511 (6th Cir. 2000).

22 3. TCML has alternatively requested leave to file the Proposed
 23 Second Amended Complaint including language which states TCML "has
 24 waived its claim for that portion of the indemnity or defense
 25 coverage available under the Policies, if any, to which Icarom would
 26 be required to make contribution or which would be offset against
 27 Icarom." Declaration of Jerry Moberg, Ct. Rec. 11, Exhibit B. It is
 28 TCML's contention that this waiver would have the effect of removing

1 Icarom as a party and mooting Seaton's third-party claims against
2 Icarom.

3 Given the present posture of the case, the Court does not find
4 the filing of the Proposed Amended Complaint would remove Icarom as
5 a party to this litigation, nor deprive this Court of subject matter
6 jurisdiction. Simply stated, the filing of the Proposed Second
7 Amended Complaint would not procedurally result in the automatic
8 dismissal or resolution of the third-party claims. Nonetheless,
9 should TCML still desire to file the Proposed Second Amended
10 Complaint, such leave is hereby granted. Should TCML decide to file
11 the amended complaint, it shall be filed WITHIN TEN (10) DAYS of
12 this order.

13 Accordingly, **IT IS HEREBY ORDERED:**

14 TCML's Motion to Remand (Ct. Rec. 10) is **DENIED** to the extent the
15 motion requests the Court remand this case to Grant County Superior
16 Court. TCML's motion is **GRANTED** as to its alternative request for
17 leave to file the Proposed Second Amended Complaint. Should TCML
18 wish to file the proposed amended complaint, it shall be filed
19 within **ten (10) days** of this Order.

20 **IT IS SO ORDERED.** The District Court Executive is hereby
21 directed to enter this order and furnish copies to counsel.

22 DATED this 20th day of January, 2006.

23 *s/Lonny R. Sukko*

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25 LONNY R. SUKO
26 UNITED STATES DISTRICT JUDGE
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